

cate of final payment to the owners (*i.e.* the defendants herein), the statement of final account was not attached thereto due to an oversight on our part but immediately after the discovery of that oversight, we sent the statement of final account the next day *i.e.* on 19th July 1985 to the defendants with the intent that both the documents *viz.* the certificate of final payment and the statement of final account are to be read as one document. A copy of my said letter dated 26th March 1986 (together with the enclosures) addressed to Messrs Shyam & Chew is now produced, shown to me and marked 'DC-2'".

The points for decision in the appeal, in our view, were (1) whether in the circumstances of the instant case the certificate of final payment dated July 1, 1985 was a final certificate within the meaning of clause 30(6), and (2) whether even if the said certificate of final payment is found to be a final certificate under clause 30(6), it is not conclusive at least in one aspect, there being defects falling within exception (b) to clause 30(7).

On the first point, we accepted the evidence as emerged from the two admitted affidavits. We were of the view that had these affidavits, particularly that of the architect, been before the learned appeal judge he would not have set aside the learned Deputy Registrar's order. On the second point, we accepted the submission of the appellants' counsel that the defects relied on are those which the purchasers of the units have raised with the developer and these are not the defects contemplated by this provision. One must look at the contract between the developer and the contractor and not at any contract between the developer and the purchasers of the units. We accordingly allowed the appeal.

Appeal allowed.

Solicitors. *Amarjit Rubin & Partners; R.C.H. Lim & Co.*

CHIEF ASSESSOR AND THE COMPTROLLER OF PROPERTY TAX, SINGAPORE v. HOWE YOON CHONG

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.)
November 18, 1987]

[Singapore — Civil Appeal No. 76 of 1984]

Revenue Law — Property tax — Annual value — Renovation — Increase in annual value — Administrative practice — Property Tax Act (Cap. 144), ss. 2, 17(4), 18(7), 19(3) & 20.

Constitutional Law — Equal protection — Constitution of Singapore, art. 12(1).

This is an appeal against the decision of the High Court ([1985] 1 M.L.J. 182 at 191) allowing the appeal against the decision of the Valuation Review Board (see [1985] 1 M.L.J. 183-191). The respondent is the owner of a two-storey detached residential house (built in 1966) No. 9 Binjai Walk, erected on a site containing an area of 18,902 sq. ft. ("the property"). At all material times, he was and still is in occupation of the property, which was first assessed at an annual value of \$2,400. As it was owner-occupied, the respondent paid property tax at a concessionary rate of 23% of the annual value amounting to \$552 per annum. Following a general assessment of annual value of properties in the Binjai Park area, the annual value of the property was increased from \$2,400 to \$8,400 as from February 9, 1970. In 1975, substantial alterations and additions were made to the house which were completed in December 1975 at a cost of \$48,000 resulting in an increase of the net floor area of the house from 3,547 sq.ft. to 5,554 sq.ft. and an increase in the number of bedrooms from two to five. The Chief Assessor, upon notification, proceeded to amend the Valuation List 1976 by increasing the annual value of the property to \$28,800 with effect from January 1, 1976 and notified the respondent accordingly. The Comptroller refused to amend their proposals. The respondent appealed to the Valuation Review Board. The Board dismissed his appeal, upon which he appealed to the High Court. The High Court allowed his appeal.

The High Court concluded that the administrative practice of the Chief Assessor was inconsistent with the provisions of Article 12(1) of the Constitution. The learned judge, applying the principle of uniformity, held that the annual value of the property for the year 1976 should be \$16,240.00. The appellants now appeal against that decision. The sole issue before the Court of Appeal is whether the assessment of annual value was made in contravention of Article 12(1) of the Constitution.

Held, allowing the appeal with costs: the action taken by the Chief Assessor in (i) proceeding under section 18(7) of the Property Tax Act to amend the Valuation List as regards the property; (ii) revising the annual value of the property to \$28,800 in accordance with section 2 of the Act, thus updating the annual value of the property; and (iii) not revising the annual values of the other properties in the Binjai Park area in which there had been no change of circumstances of the kind laid down in section 18 had not in anyway resulted in a situation which is "inconsistent with the equal protection clause of the Constitution."

Cases referred to:

- (1) *Howe Yoon Chong v. Chief Assessor, Singapore and Anor.* [1985] 1 M.L.J. 182.
- (2) *Chief Assessor, Property Tax, Singapore v. Howe Yoon Chong* [1979] 1 M.L.J. 207.
- (3) *Ladies Hosiery and Underwear Ltd. v. West Middlesex Assessment Committee* [1932] 2 K.B. 679.
- (4) *Howe Yoon Chong v. Chief Assessor, Property Tax, Singapore* [1981] 1 M.L.J. 51.

COURT OF APPEAL.

McKinnon, Q.C. (Mrs. Lucy Hangchi with him) for the appellants.

David Widdecombe, Q.C. (P. Selvadurai with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): Mr. Howe Yoon Chong, the respondent, is the owner of a two-storey detached residential house, known as No. 9, Binjai Walk, erected on a site containing an area of 18,902 sq. ft. which is situate in a good residential area. At all material times he was, and still is, in occupation of the property ("the property"). The house was built in 1966, and following the completion of the house, the property was first assessed at an annual value of \$2,400. As it was owner-occupied, the respondent paid property tax at a concessionary rate of 23% of the annual value, amounting to \$552 per annum. In 1970, there was a general assessment of annual values of properties situate in Binjai Walk, Binjai Park, Binjai Rise, Binjai Hill and the adjoining lands (all such areas being hereinafter collectively referred to as "Binjai Park area"). In the general assessment, the annual value of the property was increased from \$2,400 to \$8,400 with effect from February 9, 1970. The increase was objected to by the respondent, and on appeal it was confirmed by the Valuation Review Board. Though the annual value of the property had been increased, the property tax, by virtue of the concessionary rate granted by the Comptroller of Property Tax and a remission made by the Minister in charge, remained the same, i.e. \$552 per annum. The annual value of \$8,400 remained in the Valuation List up to 1975, and the respondent continued to pay the property tax at \$552 per annum throughout this period.

In 1970, some alterations were made to the house but apparently no notice thereof was given to the Chief Assessor, which the respondent was required to do under the Property Tax Act (Cap.

A 144; now Cap. 254, 1985 Ed.) ("the Act"). About five years later, in 1975, substantial alterations and additions were made to the house which were completed in December 1975. The alterations and additions, at a cost of about \$48,000, had resulted in an increase of the net floor area of the house from 3,547 sq. ft. to 5,554 sq. ft. and an increase in the number of bedrooms by two to five. On February 12, 1976 or thereabout, the respondent's architects notified the Chief Assessor of the alterations and additions made and the date of completion thereof.

C
Consequent upon the notice given by the respondent's architects, the Chief Assessor proceeded to amend the Valuation List under section 18, now section 20, of the Act and re-assessed the annual value of the property. By a notice dated August 23, 1976, the Chief Assessor notified the respondent that the former proposed to amend the Valuation List 1976 by increasing the annual value of the property to \$28,800 with effect from January 1, 1976. The Comptroller of Property Tax also issued a notice dated August 23, 1976 to the respondent under section 19(3), now section 21(3), of the Act that \$612 was payable as property tax of the property, upon authentication of the annual value as proposed by the Chief Assessor, for the period December 1, to December 31, 1975. The respondent objected to both the notices and upon the refusal by the Chief Assessor and the Comptroller of Property Tax to amend their proposals, the respondent appealed to the Valuation Review Board ("the Board"). In the meanwhile, the Comptroller of Property Tax, by a letter dated November 30, 1976, informed the respondent that "as a further concession to owner-occupied dwelling house", "the full tax" would not be collected but a reduced amount of \$533.60 half-yearly (or \$1,067.20 yearly) would be payable, and for the tax for December 1975 the reduced amount was \$88.93. Before the Board, the respondent's grounds of appeal against the assessment of the Chief Assessor, as summarized by the Board, were as follows:

- I
- "(a) The Chief Assessor erred in law and in fact in increasing the annual value of his property in comparison with other similar properties in Singapore; .
 - (b) The proposed annual value of \$28,800 is manifestly excessive and wrong in law and should remain at \$8,400; and
 - (c) The proposed valuation or increased valuation of the appellant's property is *ultra vires* the Property Tax Act and the Constitution of the Republic of Singapore."

The appeal against the Comptroller's decision was consequential on the appeal against the assessment of the Chief Assessor, and the respondent's contention was that the property tax payable should be assessed on the annual value of \$8,400.

The Board dismissed the appeals. The Board found as a fact that the house had been "enlarged, altered" or "improved". The Valuation List had thereby become inaccurate in a material particular, and the Chief Assessor was entitled under section 18 of the Act to amend the annual value of the property. On the question of assessment of the annual value, the Board came to the conclusion that the Chief Assessor had assessed the annual value of the property in conformity with the statutory provision, that is, section 2 of the Act, and that the annual value of \$28,800 was a fair and reasonable amount at which the property could, in 1976, have been reasonably expected to be let from year to year on the basis of a hypothetical tenancy. On the constitutional issue, the Board said that, on the evidence, it did not find that there had been any "intentional systematic under-valuation" of owner-occupied properties as contended by the respondent.

On appeal, the decision of the Board was reversed by the High Court: see *Howe Yoon Chong v. Chief Assessor, Singapore and Anor.*⁽¹⁾ Before the High Court, the principal issue was whether the Chief Assessor, in assessing the annual value of the property at \$28,800, had infringed Article 12(1) of the Constitution of Singapore. As set out by the learned judge, the respondent complained "that by reason of an aspect of the administrative practice of the Chief Assessor, he had not been accorded the equal protection of the law under Article 12(1) of our Constitution." The learned judge found that the Chief Assessor had decided as a matter of administrative policy and practice that, with regard only to owner-occupied properties in Singapore, there would be a general assessment of the annual value once in every nine or ten years, unless such owners had carried out alterations or unless such owners had ceased to occupy their properties and had let them out. He said, at p. 191:

"Now, it is clearly established in the cross-examination of the valuer of the Chief Assessor's office that in view of government's policy to encourage home ownership, the shortage of valuers and the administrative difficulties involved in having to assess the annual values of some 400,000 properties in Singapore, it was decided by the Chief Assessor as a matter of administrative policy and practice that with regard only to owner-occupied properties in Singapore, there would only be a 'general assessment' of the annual values once in every nine or ten years, unless such

A owners carried out renovations or unless such owners had ceased to occupy their properties and had let them out."

The complaint of the respondent, as set out in the judgment at p. 192, was this:

B "He says that as he had retained his owner-occupier status throughout, the property should not have been assessed on the rental values current in 1976, which assessment prematurely took him out of the owner-occupier class. He readily concedes that there should be a proportionate increase in the annual value but he says he was unfairly treated if he were to be foisted with the increase of a notional rental value. On the basis of the appellant's contention, the unit rate of \$3.59 should have been multiplied by the new 'reduced' area of 4,526 square feet, which would have produced the annual value of only \$16,240. He submits that this annual value should have been applied until the next 'general assessment' of annual values in 1979 or 1980 of properties in Binjai Park."

C D The learned judge came to the conclusion that the administrative practice carried out by the Chief Assessor was inconsistent with the provisions of Article 12(1) of our Constitution. He said, at p. 192:

E "In my judgment, the administrative practice carried out in this case was inconsistent with the provisions of Article 12(1) of our Constitution. The appellant should have been accorded the privilege of other owner-occupiers until the next 'general assessment' in 1979 or 1980. Any increase in the annual value of the property should have been limited to the unit rate per square foot current in 1970 which should be applied to what is technically called the new 'reduced' area. The appellant, as an owner-occupier, was in 1976 similarly situated in all material respects with other owner-occupiers whose properties were fortuitously not renovated. To have treated him differently as though he had notionally let out his property for the purpose of determining the annual value was to make a distinction without a difference."

G H I The unfairness of the administrative practice may be illustrated by an example. Suppose, a bungalow in Binjai Park in 1970 had a 'reduced' area of 4,526 square feet. As a result of the 'general assessment' carried out in 1970, the annual value of that bungalow would only be \$16,240. If it were owner-occupied throughout the decade from 1970 during which no renovations were carried out, the annual value would remain unamended until the next 'general assessment' in 1979 or 1980. In terms of both the status of owner-occupation and the 'reduced' area, the bungalow is exactly the same as the property of the appellant. Yet, the annual value of the property of the appellant was raised to \$28,800 although, in spite of the renovations, the 'reduced' area of the property of the appellant is exactly the same as that of the bungalow I have mentioned. This illustration is not at all far-fetched, seeing that the 'reduced' area of another owner-occupied property in Binjai Park and known as No. 63 Binjai Park, Singapore is near enough to that of the hypothetical example I have mentioned. The appellant's property and the hypothetical example I mentioned are similar in all material respects. There is no rhyme or reason to treat them differently."

For the reasons given, the learned judge allowed the appeal, and "applying the principle of uniformity to the appellant" he held that the annual value of the property for the year 1976 should be \$16,240.00. Against that decision, this appeal is now brought.

There is no dispute that the respondent had carried out substantial alterations and additions to the premises on the property, and, in our view, clearly the Board was right in its finding that the premises had been enlarged, altered or improved and in holding that the Chief Assessor was entitled under section 18 of the Act to amend the Valuation List 1976 and re-assess the annual value of the property. The question is whether in carrying out such an exercise the Chief Assessor should assess the annual value on the basis of the annual rent at which the property could, in 1970, have been reasonably expected to be let from year to year – 1970 being the year in which a general assessment of properties in Binjai Park area was carried out and the annual value of the property was re-assessed – or on the basis of annual rent at which it could, in 1976, have been reasonably expected to be let from year to year, in both cases on the basis of a hypothetical tenancy. The High Court held that the Chief Assessor should adopt the former, as the latter was inconsistent with Article 12(1) of the Constitution of Singapore. The question of constitutionality aside, the assessment of the annual value at \$28,800 made by the Chief Assessor was in conformity with the statutory definition of annual value as provided in section 2 of the Act.

The sole issue before us is whether in the circumstances this assessment of annual value was made in contravention of Article 12(1) of the Constitution. On this issue, it is necessary to consider the following questions:

- (i) whether it had been established that there were two categories of properties, namely: (a) owner-occupied properties and (b) properties rented out, in the sense that in assessing their annual values the Chief Assessor had adopted a different and distinct policy in the treatment of the former;
- (ii) whether it had been established that the Chief Assessor had decided that "as a matter of administrative policy and practice" there would be a general assessment of annual values of owner-occupied properties once in every nine or ten years, unless in respect of

A any of such properties there was a change in a material particular thereof, *e.g.* alteration or renting out by the owner of the property;

(iii) whether the administrative policy and practice – whatever such policy and practice may be – was inconsistent with or infringed Article 12(1) of the Constitution; and

B

(iv) whether there had been established any "intentional systematic under-valuation" of owner-occupied properties in or in the vicinity of Binjai Park.

C

For the purpose of determining these questions, it is necessary to examine in some detail what had been established before the Board.

For the respondent, Mr. J. M. Carter, a chartered surveyor and valuer, gave evidence, and his evidence, in so far as relevant, was this. He made a search of the Valuation List at the Property Tax Department and prepared a table containing details of annual values for 1965, 1970 and 1976 of properties situate in Binjai Walk, Binjai Rise, Binjai Hill and Binjai Park (exhibit A5). He said that for the period 1970 to 1976, in the case of owner-occupied properties, their annual values were static and remained the same, with the exception of Nos. 4, 9, 11 and 12 Binjai Walk and Nos. 72 and 78 Binjai Park, where there were changes in the annual values. These changes were due to the properties having been altered in size or having been sold. On the other hand, where properties were not owner-occupied – in the context of his evidence we think he meant properties rented out – there were increases in annual values and not a single one of them did not undergo a substantial increase in annual value between 1970 and 1976. He also carried out a search of the annual values for 1979 of properties situate in Binjai Walk and prepared a schedule thereof (exhibit A6) which he compared with the 1976 valuation, and there appeared to be no change in the annual values of the owner-occupied properties, except for Nos. 9, 12 and 15 Binjai Walk where there were alterations made to the premises. He said that the Chief Assessor appeared to be treating owner-occupied premises "as a class different from properties that were let out". He said:

I

"From the lists [exhibits A5 and A6] which I have compiled it appears that the Chief Assessor has two categories of properties, one which is normally let and the other owner-occupied.

In respect of owner-occupied properties he has established a 'tone of the List' *i.e.* the general level or datum which

is applied to all owner-occupied properties. That 'tone' is maintained between one general valuation and another.

There was a general valuation in this locality in 1970. As far as I know there has not been another.

For let out properties, the Chief Assessor appears to have adopted a different and distinctive policy of reviewing and amending the annual values whenever there has been a change in the considerations of the individual properties. In other words there is no 'tone of the List'."

Mr. Dennis Tan, an executive valuer in the Property Tax Division, gave evidence for the Chief Assessor. He was the valuer at the material time in charge of the area covering, *inter alia*, Binjai Park area. He commented on various properties listed in exhibit A5 and showed the changes in annual values that had taken place. He said all the properties there had been re-assessed since 1976; the list was only accurate as of 1976. He said:

"In 1976, when there were extensions or changes like a letting or increases in rentals, we reassess that property.

The general reassessment for properties where there were no changes was done in 1979.

It would have been physically impossible to reassess all properties in Singapore whenever there is a change in one property because there are over 300,000 properties in Singapore."

He compiled a list of 12 owner-occupied properties (exhibit R7) situate in Binjai Park area, of which the annual values had been revised at various times during the period between 1970 and 1979, due or attributable to alterations and additions carried out to the properties. He compiled a second list of properties in Binjai Park area rented out (exhibit R8) showing the changes in rentals at various dates covering the period principally from 1970 to 1976, and he said that rentals had increased between 1970 and 1976. There is also a third list (exhibit R9), which he compiled, of properties which were owner-occupied but subsequently rented out and in which were shown increases in annual values as from the dates of commencement of letting out. In his evidence, in cross-examination, he said that after the general assessment of properties in Binjai Park in 1970 the annual values of the properties were kept up to date from time to time if there were significant changes. On this point, we quote, verbatim, the material part of his evidence in cross-examination:

"Q: As far as Binjai Park was concerned, what properties were not reassessed?

A: After general reassessment in 1970, the Valuation List was kept up to date from time to time upon certain signifi-

A cant changes *e.g.* properties where there were extensions, alterations and additions, properties with rental increases, properties owner-occupied and let subsequently and there were also new properties completed in Binjai Park.

[Chairman: So if there was no change in circumstances then there was no reassessment?

B Answer: Yes.]

Q: So for Valuation List from 1970-1976, if there was an owner-occupied property which did not have those circumstances, there was no revaluation?

A: That is right. We exercised our option under section 10 of the Act.

Q: If it remains owner-occupied throughout there will be no revaluation unless there is renovation or alteration?

A: Yes, unless there is a significant change."

D He later said, and we quote:

"Q: Was there a general assessment of properties in Binjai Park in 1979?

A: Yes. Many were reassessed. No. 4 was revised to \$21,000 w.e.f. 11.6.79, a general assessment. No. 6 was reassessed to \$27,900 w.e.f. 2.7.79, again a general reassessment. No. 7 was reassessed to a.v. of \$36,200 w.e.f. 25.6.79, a general reassessment. No. 10 was reassessed to \$17,700 w.e.f. 1.1.79 because of an addition. No. 11 was revised to \$16,680 w.e.f. 25.6.79. No. 12 was reassessed to \$22,560 w.e.f. 18.6.79. No. 15 was reassessed to \$32,000 w.e.f. 18.6.79, a general assessment. No. 17 was reassessed to \$22,800 on 18.6.79 and No. 19 to \$31,200 from 18.6.79, also a general assessment.

Q: Between 1970-79, as far as Binjai Walk was concerned, there was a general reassessment in 1970, 76 and 79?

A: No. Only in 1970 and 1979.

G Q: In page 2 of A5, there was no change for 6 Binjai Rise between 1970 and 1976?

A: It was revised to \$12,000 w.e.f. 31.12.76 because of alterations. For reassessment in 1979 it was revised to \$32,400 from 18.6.79.

H Q: With regard to owner-occupied premises in Binjai Park there would be changes in annual values only if there were changes or alterations to owner-occupied premises?

A: That is true.

I Q: Between 1970 and before general revision in 1979 for owner-occupied premises throughout, there would only be a revision if there were renovations or alterations?

A: Yes."

Finally, in his evidence on re-examination, he said that by 1979, before the general reassessment took

place, about two-thirds of the properties in Binjai Park area had been reassessed.

The sum total of the evidence, so far as we can gather, including the necessary inferences we can properly draw, amounts to this. By reason of the large number of properties in Singapore, it was physically impossible to carry out a *general* assessment of all the properties in Singapore every year or whenever there was a change of any material particular of a property. In so far as Binjai Park area is concerned, there were two general assessments in annual values of properties, one in 1970 and one in 1979. On this point, we would observe that it was not the evidence of Mr Dennis Tan – nor for that matter was it the evidence of Mr Carter – that such general assessment was confined only to owner-occupied properties; properties rented out were also subject to this exercise. Apart from these two general assessments, at the end of every year, the Chief Assessor adopted the Valuation List then in force for the ensuing year with such changes as he considered necessary. This he was entitled to do under section 10 of the Act. But in the interval between the general assessments, if there was a change in any material particular of a property, a reassessment of annual value of that property was carried out. Such changes of course took many forms. In the case of owner-occupied properties, there were alterations, additions or improvements, and, in such cases, reassessments of the annual values took place. A reassessment also took place when the properties formerly owner-occupied were rented out or were sold. In the case of owner-occupied properties, there were alterations, additions or improvements, and, in such cases, reassessments of the annual values took place. A reassessment also took place when the properties formerly owner-occupied were rented out or were sold. In the case of properties rented out, reassessments took place if there were such changes as alterations, additions or improvements or if there were changes in the rentals. Obviously, in the case of this category of properties, changes in annual values occurred more frequently because of changes in rentals.

Question (i)

The evidence adduced, in our view, does not support Mr. Carter's conclusion that the Chief Assessor had adopted a classification of two categories of properties, namely: (a) owner-occupied properties and (b) properties rented out, in the sense that in respect of the former, the Chief Assessor had adopted the "tone of the List", and

A in respect of the latter, the Chief Assessor had adopted a "different and distinct policy" of reviewing and amending the annual values whenever there were changes of rentals. There was no evidence to suggest that in the case of any property rented out in which there was no change of circumstances occurring, the Chief Assessor nonetheless reviewed and amended the annual value. Nor, conversely, was there any evidence that in respect of any owner-occupied property, where a change of circumstances had occurred, the Chief Assessor did not take steps to amend the annual value thereof. We also do not accept Mr. Carter's view that the "tone of the List" had in effect been adopted by the Chief Assessor in assessing the annual values of owner-occupied properties. The concept of "tone of the List" is provided by statute in England and is now contained in section 20 of the General Rate Act 1967, and the effect of that section is briefly summarized in *Ryde On Rating* (13th Ed.) at p. 473 as follows:

"The effect of the section is that the hereditament, its locality and matters affecting the amenities of the locality are taken in their state at the date of the proposal, but the value ascribed to the hereditament is that which would have been ascribed to it if it had been put in the Valuation List when the List was prepared, i.e. its value according to the 'tone of the List'."

Such a concept has no place in our law relating to property tax. Under the Act, the Valuation List of properties in Singapore is valid for one year and for the ensuing year the Chief Assessor, under section 10, has a discretion either to cause to be prepared a new Valuation List or adopt the Valuation List then in force with such alterations and amendments as may have been made from time to time and any alteration or amendment as regards annual value must reflect the value of the current year. Similarly, any amendment made under section 18, now section 20, of the Act will have to reflect the value as of the date on which the amendment is to take effect. On an analysis of the evidence, the answer to question (i) is clearly in the negative; there was no evidence to support a conclusion to the contrary.

Question (ii)

We think that it can fairly be said that by inference from the evidence, as a matter of practice, the Chief Assessor caused to be carried out a general assessment of all properties in Singapore once in every period of nine years or ten years – he did that in 1970 and in 1979 so far as Binjai Park area is concerned. But it is not clear from the evidence whether such a practice was sanctioned by any

definite and deliberate policy of the Chief Assessor or was resorted to periodically out of sheer expediency whenever it was feasible and convenient to carry out a general assessment. We are inclined to the view that it is probably the latter, as there was no evidence of any definite policy or consistency in the practice adopted by the Chief Assessor.

Question (iii)

Assuming that such a practice was carried out pursuant to any policy of the Chief Assessor, does the consequential effect thereof infringe or contravene Article 12(1) of the Constitution? Article 12(1) provides as follows:

"12(1) All persons are equal before the law and entitled to the equal protection of the law."

Every property, be it owner-occupied or property rented out, is subject to that policy and practice; as we have said, it was not in evidence that only owner-occupied property was subject to this practice. If there is no change in the property – change within the meaning of section 18 of the Act – no revision in the annual value is carried out until the next general assessment, and, in the meanwhile, at the end of every year, the Valuation List then current is adopted for the ensuing year. If there is a change occurring in a property, whether it be owner-occupied or rented out, a revision of the annual value thereof is carried out, and the revision is carried out by assessing the annual value in conformity to the statutory definition of the annual value as provided in section 2 of the Act – the annual value is assessed upwards or downwards depending on the circumstances of the property that is to be reassessed. If the change is in the form of alteration and addition of the premises, as in the case of the property here where the premises were altered both quantitatively and qualitatively, obviously the annual value will be increased. If this is the case, the annual value of the property arrived at in the previous general assessment cannot be maintained and an assessment of the current annual value in conformity to section 2 of the Act must be made. Such an exercise is carried out regardless of whether the property is owner-occupied, rented out or otherwise. On this reasoning, there is, in our view, no breach of Article 12(1) of the Constitution.

Question (iv)

We now turn to the last question: whether there had been established any "intentional systematic under-valuation" of owner-occupied

A properties in Binjai Park area. On this, the Board said:

"From the evidence before us, we do not find as a fact that there had been 'intentional systematic under-valuation' such as was envisaged by the Supreme Court in *Sioux City Bridge Co. v. Dakota County* (1922) 260 US Reports 441 and in *Cumberland Coal Co. v. Board of Revision* 284 US 23. The appellant has failed to show that there had been an intentional and arbitrary under-valuation adopted by the respondent. No charge of bad faith either was ever made against the respondent. Like the rest of Mr. Selvadurai's grounds, this also fails."

B
C On the evidence, the Board was well justified in arriving at this conclusion and we are in entire agreement with it. Indeed, there was no evidence of any "intended systematic under-valuation" of owner-occupied properties carried out by the Chief Assessor. The practice of the Chief Assessor in: (i) causing to carry out a general assessment of all properties once in every period of nine years or ten years or such other period of time as may be deemed expedient; (ii) in the meanwhile, adopting at the end of every year the Valuation List then in force for the ensuing year, and (iii) revising or re-assessing the annual value of properties whenever there was a change of circumstances of the kind as set out in section 18, arose out of the sheer physical impossibility of reviewing and equalizing the assessments of all the properties every year or on every occasion when there was a reassessment of the annual value of a property owing to a change of circumstances under section 18. There was no suggestion that such practice of the Chief Assessor was carried out other than in good faith and in compliance with the Act.
D
E
F

On a further analysis, the constitutional issue raised in this case is not dissimilar to that raised in *Chief Assessor, Property Tax, Singapore v. Howe Yoon Chong*.⁽²⁾ There, the annual value of another property of the respondent had been reassessed at the then current value and it was argued, *inter alia*, that it had not been fairly valued in comparison with other properties which were low and the respondent's rights under Article 12(1) (then numbered as Article 8(1)) had been infringed. This point was dealt with at great length by this court. Wee Chong Jin C.J., who delivered the judgment of the court, said at pp. 210-211:

I "Another contention advanced by Mr. Widdecombe is that the Chief Assessor in re-valuing upwards the annual value of the respondent's property without at the same time re-valuing the annual values of other properties, knowing full well that their annual values were out of date, has intentionally discriminated against the respondent and, as such, the respondent has been denied the right to 'the equal protection of the law'.

In our opinion no case can be made on the evidence, direct or by inference, of an intentional and arbitrary discrimination by improper execution of his statutory duties on the part of the Chief Assessor against the respondent, nor can the evidence support a finding that there was intentional systematic under-valuation by the Chief Assessor of other taxable properties in the same class as the respondent's property."

He then referred to the "so-called rule" in *Ladies Hosiery and Underwear, Ltd. v. West Middlesex Assessment Committee*⁽³⁾ and said at p. 211:

"The respondent contends that the so-called rule in the *Ladies Hosiery* case does not apply in Singapore. The contention is that if the Chief Assessor assesses the annual value of a property in conformity with the definition of 'annual value' in the Act, i.e. 'correctly' or 'accurately', and by so doing the property is assessed at a sum higher than the assessments of other comparable properties in the Valuation List, then the owner of the property that has been accurately assessed has been denied the equal protection of the law which is guaranteed to him by Article 8(1) of the Constitution. We are unable to accept that contention.

The law, as enacted by the Act, is that each property should be assessed independently and in accordance with the provisions in the Act. In our judgment, it would be contrary to common sense, if, complying with the provisions of the Act, the Chief Assessor arrives at a correct sum for a property, his assessment is struck down as contrary to Article 8(1) because other comparable properties have been incorrectly assessed by him. It would be patently absurd for a court to say to the Chief Assessor that although he had assessed a property in accordance with its correct annual value, he had acted unlawfully or *ultra vires* Article 8(1) because he should have, at the same time, corrected incorrect assessments of other comparable properties so that all comparable properties are thus uniformly assessed. In our opinion, the basic principle under the Act is that a property must be assessed independently and correctly, i.e. in accordance with its annual value. Once this is done, it is immaterial that, as a consequence, other comparable properties are in fact assessed incorrectly. The remedy then would be for the Chief Assessor to correct, in accordance with the provisions of the Act, any incorrect assessments."

Against that decision, the respondent appealed to the Privy Council, and the appeal was allowed on the ground that the court should not have proceeded to consider the valuation, as it did, but should have remitted the case to the High Court to determine the question of valuation: see *Howe Yoon Chong v. Chief Assessor, Property Tax, Singapore*.⁽⁴⁾ But on the constitutional issue, the Privy Council held that there was no breach of the equal protection clause in the Constitution and did not disapprove any part of the judgment of the court on that issue. Lord Fraser of Tullybelton, in delivering the judgment of the Board, said at p. 53:

"But a breach of the equal protection clause could not be established by proving the existence of inequalities due to inadvertence or inefficiency unless they were on a very

A substantial scale. Several authoritative decisions on the equal protection provision of the Fourteenth Amendment to the American Constitution were brought to the attention of their Lordships. Some caution is required in applying these authorities to the Constitution of Singapore but their Lordships see no reason to doubt that 'intentional systematic under-valuation', such as was envisaged by the Supreme Court in *Sioux City Bridge Co. v. Dakota County* would be a breach of Article 8 of the Singapore Constitution. No case of that sort was made in this appeal. Something less might perhaps suffice, but their Lordships are of opinion that, where the defects are the result of inadvertence or inefficiency, such as is alleged in this case, the test of unconstitutionality would not be substantially different from the test of validity of the List. In the present case defects on the necessary scale have not been proved to exist."

Later, after a brief reference to the *Ladies Hosiery* case, he said at p. 53:

D "In the event of the corresponding provisions in sections 2 and 18(7) of the 1961 Act leading to a valuation inconsistent with the equal protection clause of the Constitution it might be that the principle of correctness would have to yield to the principle of uniformity. That question does not arise in this appeal and their Lordships express no opinion upon it."

E The first sentence of this passage of the judgment was relied upon in the High Court. With respect, we do not think it lays down any broad principle of law. In our view, it merely posed a question or, at the highest, raised a plausible argument on which the Board refrained from expressing any definitive opinion; that is evident from the last sentence.

In our opinion, the action taken by the Chief Assessor in: (i) proceeding under section 18(7) to amend the Valuation List as regards the property; (ii) revising the annual value of the property to \$28,800 in accordance with section 2 of the Act, thus updating the annual value of the property; and (iii) not revising the annual values of the other properties in Binjai Park area in which there had been no change of circumstances of the kind laid down in section 18, had not in anyway resulted in a situation which is "inconsistent with the equal protection clause of the Constitution"

In the result, this appeal is allowed. We set aside the order made by the High Court and restore the order made by the Board. The costs of this appeal and in the High Court will have to be paid by the respondent and there will be the usual consequential order for the refund to the appellant of the deposit paid into court as security for costs of the respondent.

Appeal allowed.

Solicitors: Rodyk & Davidson.